1:CV 01-2070

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

ROBERT MARIANA, MICHAEL J. MCFADDEN, KAREN M. MORAN, and EDWARD M. NANKERVIS, Plaintiffs, v. D. MICHAEL FISHER, in his official capacity as ATTORNEY GENERAL OF THE COMMONWEALTH OF PENNSYLVANIA, and LARRY P. WILLIAMS, in his official capacity as SECRETARY OF REVENUE OF THE COMMONWEALTH OF PENNSYLVANIA, Defendants.	FILED HARRISBURG OCT 31 2001 MARY E. D'ANDREA, CLERK DEPUTY CLERK Civil Action No. 918 COMPLAINT

Plaintiffs, Robert Mariana, Michael J. McFadden, Karen M. Moran, and Edward M. Nankervis, for their complaint, allege, upon personal knowledge as to themselves and their own acts and, as to all other matters, upon information and belief based upon, inter alia, the investigation made by and through their attorneys, as follows. Additional information in support of the claims herein is within the exclusive possession, knowledge and control of defendants.

Introduction

1. Plaintiffs bring this action under § 1 of the Sherman Act, 15 U.S.C. § 1, to enjoin continuing violations of the antitrust laws contained in the Master Settlement Agreement of November 23, 1998 (hereafter sometimes called the "MSA") between the four largest tobacco manufacturers (the "Majors") and the attorneys general of 46 states.

2. The MSA contains a coercive scheme that forces all tobacco manufacturers competing with the Majors to become parties to that agreement, restricts their output of tobacco products, and prevents entry of new competitors, resulting in the imposition of artificially high prices on purchasers and consumers of tobacco products such as plaintiffs. The MSA has created an industry cartel whose market share is protected while the cartel raises prices again and again. This displacement of competition in the tobacco industry is a per se violation of the Sherman Act. Its nationwide reach prohibits application of the local or intrastate exemption from federal antitrust laws provided by the state action doctrine. In addition, it fails to provide for the active supervision of private actors required to enjoy immunity under the state action doctrine. This Court should enjoin the performance of this unlawful scheme under § 16 of the Clayton Act.

3. In addition, by eliminating competition in an entire interstate industry, the MSA unconstitutionally encroaches upon the enumerated federal power to regulate interstate commerce, it interferes with existing federal legislation, and it constitutes an unapproved, and hence unconstitutional, interstate compact or agreement. Plaintiffs therefore seek a judgment declaring that the MSA is unconstitutional and enjoining its further implementation and enforcement.

Jurisdiction and Venue

4. This action arises under § 1 of the Sherman Act, 15 U.S.C. § 1, prohibiting conspiracies, contracts and combinations in unreasonable restraint of trade, and the Commerce and Compacts Clauses of the U.S. Constitution, U.S. Const, Art. I, § 8, cl.3, and Art. I, § 10, cl.3, which grant to Congress the power to regulate interstate commerce and prohibit the states from making interstate compacts without the consent of Congress.

5. The subject matter jurisdiction of this Court is based upon § 16 of the Clayton Act, 15 U.S.C. § 26, and 28 U.S.C. §§ 1331, 1337 and 2201.

6. Venue is proper in this district under 28 U.S.C. § 1391(b). Each of the defendants may be found and conducts official business in this district at the State Capitol of the Commonwealth of Pennsylvania in Harrisburg.

The Parties

7. Plaintiffs Robert Mariana, Michael J. McFadden, Karen M. Moran, and Edward M. Nankervis, are residents of the Commonwealth of Pennsylvania and are consumers of cigarettes, including those manufactured by the Majors, who have had to pay artificially high prices for those products by reason of the antitrust violations alleged herein.

8. Defendant D. Michael Fisher is the Attorney General of the Commonwealth of Pennsylvania and is sued herein solely in his official capacity. Defendant Fisher was one of eight Attorneys General who negotiated the national $206 billion tobacco settlement that is encompassed in the MSA. Defendant Fisher's Office

receives the payments made to the Commonwealth by tobacco companies pursuant to the terms of the MSA.

9. Defendant Larry P. Williams is the Secretary of the Department of Revenue of the Commonwealth of Pennsylvania and is sued herein solely in his official capacity. Defendant Williams is charged with the collection of revenues of the Commonwealth.

10. Philip Morris Inc. ("Philip Morris"), R.J. Reynolds Tobacco Company ("RJR"), Brown & Williamson Tobacco Corp. ("B&W"), and Lorillard Tobacco Company ("Lorillard"), are the four largest tobacco companies in the United States (sometimes referred to herein as the "Majors"), and are the Original Participating Manufacturers identified in and who negotiated the MSA. The Majors are not named as defendants herein because the Third Circuit Court of Appeals has ruled that they are shielded from liability with respect to their petitioning for the MSA by the Noerr-Pennington immunity doctrine. *A.D. Bedell Wholesale Co. v. Philip Morris, Inc.*, 263 F.3d 239 (3d Cir. 2001). The Majors are persons in active concert or participation with defendants within the meaning of Rule 65, Fed. R. Civ. P.

The Cigarette Market

11. The relevant market in which the anticompetitive acts alleged herein occurred is the sale of tobacco products by cigarette manufacturers and importers of cigarettes in the United States. These sales occur in interstate commerce or substantially affect interstate commerce.

12. The domestic cigarette market is highly concentrated. For decades, the market consisted of six major manufacturers: Philip Morris (Marlboro, Merit, Virginia Slims, Benson & Hedges, etc.), RJR (Winston, Salem, Camel, Doral, etc.), B&W (Kool, Raleigh, GPC, etc.), American Tobacco Company ("American") (Lucky Strikes, Tareyton, Pall Mall, etc.), Lorillard (Newport, Kent, etc.), and Vector Group Ltd., f/k/a Liggett Group, Inc. ("Liggett"). In 1995, most of the business of American was acquired by B&W. Its discount business was acquired by Commonwealth Brands, which joined the MSA in December 1998. Liggett joined the MSA in November 1998. In light of Liggett's decline in market share to less than 2%, it can no longer be considered a Major.

13. When the MSA was entered into in 1998, the four Majors collectively accounted for more than 98% of sales in the domestic cigarette market. Philip Morris had a 50% market share, RJR had a 24.3% share, B&W had a 15% share, and Lorillard had a 9.3% share. In the first six months of 2001, after having increased prices since the MSA by an astonishing 60%, the Majors nevertheless continued to dominate the industry with a combined market share of 93.6%. The balance is made up of small manufacturers and importers.

14. Despite unprecedented negative publicity and contrary to media-generated perceptions, domestic cigarette consumption has not declined substantially since the MSA was entered into. A significant number of adult Americans continue to choose to smoke, and it is unlikely this trend will change in the near future. There was an initial 10% decline in shipments in 1999 to 419 billion units (cigarettes), but in 2000 cigarette shipments increased to approximately 440 billion units. Industry revenues have risen

dramatically from approximately $21 billion in 1997 to approximately $45 billion in 2000 at the manufacturers' level.

The MSA

15. The MSA concluded a series of cases brought or threatened by the states against the Majors and other companies and organizations related to the tobacco industry. These cases sought to recover Medicaid funds spent to treat diseases alleged to have a risk-association relationship to the use of tobacco products. Those cases were in various postures: one was actually at trial, others were pending, and others had been subject to significant adverse court rulings that had effectively frustrated the prosecution of the cases. Indeed, some of the "settling" states never elected to file cases at all. Most, if not all, of the cases also alleged some form of consumer fraud and antitrust or other conspiracy on the part of the tobacco manufacturers.

16. Defendant Fisher brought suit against the Majors on behalf of the Commonwealth of Pennsylvania in April 1997. *Commonwealth of Pennsylvania v. Philip Morris, Inc., et al.*, Court of Common Pleas, Philadelphia County, April Term 1997, No. 2443. The suit alleged counts in conspiracy, breach of special duty, fraud, negligence, strict liability, unfair trade practices, nuisance, and unjust enrichment. The suit was settled as part of the MSA.

17. On November 23, 1998, the attorneys general of 46 states and the Majors agreed to enter into the MSA to resolve the cases brought by the states. Four states, Florida, Mississippi, Texas and Minnesota, made separate, individual settlements prior to the MSA. The MSA also settled suits brought by Puerto Rico, the District of Columbia, certain U.S. territories and certain political subdivisions of certain states. The MSA, with

all exhibits, is available on the website of the National Association of Attorneys General, naag.org.

18. Under the MSA, the Majors agreed to pay the settling states initial and annual payments totaling $206 billion over the first 25 years and thereafter $9 billion annually. The terms of the agreement also call for curtailments of certain civil liberties of the Majors, including marketing restrictions, regulations of lobbying and restrictions on association. None of those restrictions, however, has done anything to reduce smoking. Their only effect has been to further entrench the market share of the Majors.

19. The Majors agreed to the annual transfer of billions of dollars to the states provided that the agreement was structured so that the Majors could fund such transfers by having wholesalers and consumers pay artificially high prices for cigarettes, thereby leaving a substantial profit to the Majors. The artificially high prices charged by the Majors since the MSA and implementation of its output restrictions have generated revenue far in excess of that needed to fund the Settlement and have enabled the Majors to spend record amounts on cigarette advertising. In 1999, the first year after the MSA, the Majors spent over $8 billion in advertising and promotional expenditures, a 22% increase over 1998 expenditures. In the case of Philip Morris, the price increases have led to record profits in 2000 for its domestic cigarette company. On the other hand, as of April 2001, only 7% of the nearly $13.5 billion received by the states in payments under the MSA had been allocated for new or expanded tobacco control programs.

The Output Cartel Created by the MSA

20. The MSA contains provisions, described below, restricting the output of the Majors' competitors and preventing them from gaining market share from the Majors. Through these provisions, the MSA was designed to and has thus far succeeded in destroying the free market for cigarettes. It had to do so. Otherwise, when the Majors raised their prices to fund the payments to the states under the MSA, the prices of the Majors would not be competitive, and consumers would be able to choose lower-priced products of companies that were not accused of the underlying bad conduct and consequently were not subject to the MSA payments. Thus, either existing smaller companies or new companies not subject to the MSA's funding burdens would fill the competitive void. If that happened, the Majors would lose a substantial share of their market and thus be unable to make the ongoing payments without cutting into their profits. For this reason, when it came time to settle the cases, the state attorneys general faced an ironic problem. To craft a settlement, they were forced to agree to terms that not only would save the Majors but also would ensure a perpetual shared and unregulated monopoly for them. The states came to destroy the Majors, but ended up rewarding their bad conduct with perpetual life and excessive profits by eliminating competition from discount cigarettes.

21. A major objective of the MSA is to prevent small manufacturers and importers, which the MSA calls Subsequent Participating Manufacturers ("SPMs") and Non-Participating Manufacturers ("NPMs"), MSA §§ II (cc) and (tt), from expanding their market share, and to prevent new or potential competitors from entering the market.

These restraints assure the maintenance of the artificially high prices intended by the Majors to be a necessary result of the MSA.

22. By coercing the smaller companies into joining, the MSA furthers the tradition of anticompetitive conduct in tobacco product markets. No legitimate public health policy that could not be achieved by state taxes is advanced by this result. Indeed, the purpose and effect is to reward the Majors by eliminating competition -- in the form of product innovation, pricing, and adult-oriented marketing. Historically, the dominant manufacturers in the tobacco markets have aggressively sought to eliminate competition whenever it arises.

23. The MSA is designed to displace and has displaced competition in the cigarette industry in four ways: first, to contain discount sales by present small competitors; second, to prevent the entry of new competitors at the discount end of the market; third, to prevent significant price competition among the Majors themselves; and fourth, to permit significant price increases accomplished through tacit, if not express, agreements to raise prices.

24. To stifle the open invitation to price competition that the Majors' anticipated price increases would invite, the MSA adopted two provisions intended to displace competition in the tobacco industry. First, each state was required to enact and vigorously enforce a so-called "Qualifying Statute" in prescribed form (MSA Exhibit "T") that "effectively and fully neutralizes the cost disadvantages that the Participating Manufacturers experience vis-à-vis Non-Participating Manufacturers within such Settling State as a result of the provisions of this Agreement." MSA § IX(d)(2)(E). The Qualifying Statutes, which have now been enacted in all 46 states that are parties to the

MSA, require each NPM to pay massive amounts into a so-called Escrow Fund for the payment of potential damages in health care liability suits yet to be brought against them. Further, a $50 million "enforcement" fund was set up to finance enforcement of the Qualifying Statutes and the MSA. MSA § VIII(c).

25. The Pennsylvania Qualifying Statute, called the "Tobacco Settlement Agreement Act," was enacted in June 2000. 35 P.S. §§ 5672-5674. This Act, substantially in the form of the Model Statute attached as Exhibit "T" to the MSA, requires each Non-Participating Manufacturer of cigarettes either to become a signatory to the MSA as an SPM or to make payments into an escrow fund to be held to pay any judgment or settlement in favor of the Commonwealth or to be returned to the manufacturer after 25 years if not needed to pay judgments or settlements. Payments for the year 2000 were $.0104712 per cigarette, or $2.09 per carton, increasing to $3.77 per carton in 2007 and thereafter. If the NPM's payment under the Qualifying Statute exceeds what its payment would have been as an SPM under the MSA, the excess will be released so that the statutory payment does not exceed the MSA payment.

26. For every carton of cigarettes sold by an NPM in the Commonwealth of Pennsylvania after the effective date of the Qualifying Statute, the NPM would be required to pay into the escrow fund as much as 40% of its sales revenues. Since industry operating profit margins average less than 40% of revenues, the option to remain as an NPM is prohibitively expensive. The option to stay out of Pennsylvania and engage in business only in one or more of the four non-MSA states is also unavailing because the statute applies to an NPM's products sold anywhere in the United States. If an NPM sells to a distributor in Florida, it must still make payments into the Pennsylvania escrow fund

to the extent that any of its cigarettes ultimately are shipped to and sold in Pennsylvania. Thus, the only option that permitted an NPM to remain in business without violating the Qualifying Statutes was to join the MSA and become an SPM.

27. To avoid the impact of the Qualifying Statutes, small manufacturers representing almost the entire balance of the market joined the MSA by becoming SPMs. The MSA, however, restricts SPMs from gaining market share from the majors, through a restriction on their output known as the "Renegade Clause." Under the Renegade Clause, an SPM is not required to make any payments to the states under the MSA so long as its market share does not exceed the greater of its 1998 market share or 125% of its 1997 market share. This provision, found at § IX(i) of the MSA, states as follows:

> "A Subsequent Participating Manufacturer shall have payment obligations under this Agreement only in the event that its Market Share in any calendar year exceeds the greater of (1) its 1998 Market Share or (2) 125 percent of its 1997 Market Share."

This provision effectively puts a market share cap on SPMs and restricts their output.

28. The output restriction of the Renegade Clause was designed to prevent current cigarette manufacturers from decreasing prices (or maintaining price levels when the Majors increased their prices) to gain market share and to bar new entrants from the market. This provision creates strong disincentives for SPMs to increase their production and market share. In the face of a price increase by the Majors, if an SPM aggressively uses its price competition to expand its market share, then it will quickly reach its market share cap. At that point the SPM incurs payment obligations under the MSA. In 2000, that payment obligation was approximately $2.14 per carton. At the selling prices that prevailed for discount cigarettes, the payment would be approximately 40% of its selling price, an amount greater than operating profit margins for small sellers of discount

cigarettes. Thus, the Renegade Clause restricts SPMs from underpricing the Majors to increase market share, even if they could efficiently do so.

29. Moreover, the MSA imposes steep barriers against new entrants. It effectively bars new entry because, in an Orwellian exercise, it provides that the 1997 market share for new entrants shall be zero percent (0%) for purposes of determining the market share cap. MSA § IX(i)(4). Thus, new entrants must contribute their pro rata share of the settlement payments to the states even though they have never been charged with committing any wrongful acts. Alternatively, if they refuse to join the Settlement, they face payment of draconian penalties under the Qualifying Statutes.

30. The net impact of the market share cap is to limit output of SPMs and eliminate price competition, because the future market share growth of existing companies (other than OPMs) is limited to 125% of their 1997 level or 100% of their 1998 level. Thus, given the way the MSA is structured, competition for domestic cigarette sales is effectively foreclosed, especially when the Majors set artificially high prices in that market.

31. The result is that the small companies that had a combined market share of less than 2% when the MSA was executed are limited in growth to an aggregate market share of 2.5%. From the viewpoint of the Majors, allowing the existing small competitors to sell a maximum of 125% of their 1997 sales or 100% of their 1998 sales was literally a small price to pay for assuring that the excessive price structure will continue to be intact.

32. Thus, the SPMs were forced by economics into joining the scheme; new entry was precluded; and the Majors allocated to themselves 98% of the market. An unregulated cartel was created. As might be expected, the Majors then raised their prices to supracompetitive levels – far more than was necessary to fund their settlement payments. Since the execution of the MSA, the Majors have raised wholesale prices of cigarettes nearly 60% while losing market share of only 4.4%.

33. The MSA also establishes penalties for the encroachment on market share as between the Majors themselves. The penalties for such encroachment are set forth in MSA § IX(d)(3). This section contains a complicated formula under which a manufacturer who gains market share relative to its 1997 market share has to pay an increased amount of the settlement in any given year and the manufacturer whose market share in that given year was less than its market share in 1997 will have to pay correspondingly less. Thus, the Majors have agreed to penalize even one of their own that captures market share greater than its allocation.

34. Moreover, the inevitable effect of the limitations on advertising and promotional activity (see MSA § III), also makes it more difficult for the Majors to obtain incremental market share from one another.

35. Another restraint contained in the MSA partially relieved the Majors from making settlement payments in the event significant erosion of their collective 98% market share occurred due to competition from NPMs. The MSA provides that if the Majors as a whole lose market share because of such competition, then the Majors can deduct from their settlement payments amounts to compensate them partially for the market share they have lost. Thus, to the extent the MSA succeeds in maintaining

market share for the Majors at the artificially high levels needed to fund the past damages and to give each of them an exorbitant profit, they will continue to make the annual settlement payments agreed upon. To the extent the Majors as a group lose market share, their collective payments are substantially reduced. The specter of this reduction of settlement payments to the states in the event that competition from NPMs eroded the market share of the Majors as a whole provided a powerful incentive to the states and the Majors to use their best efforts in coercing and intimidating NPMs into joining the MSA.

The Majors Take Advantage of the Output Cartel

36. The day after the MSA was executed, Philip Morris and RJR, within minutes of each other, announced a price increase of 45¢ per pack. The next day, B&W followed with the same price increase, and then Lorillard followed in turn. These price increases were imposed on current and future consumers so as a) to make them pay for the past sins of the Majors, b) to allow the Majors to make exorbitant profits as a result of the MSA, and c) to pay billions of dollars in legal fees to a group of private plaintiffs' attorneys who controlled the representation of the states. The initial 45¢ per pack increase was roughly twice what was necessary to fund the settlement.

37. The Majors raised prices by another 18¢ per pack in August 1999, by 13¢ per pack in January 2000, by 6¢ per pack in July 2000, by 14¢ per pack in December 2000 and by another 14¢ per pack in April 2001. The wholesale price of a carton of cigarettes has increased from approximately $19.00 per carton to $30.00 per carton in just two and a half years. As a consequence, prices have been increased by nearly 60% since the MSA was executed, thereby creating an acute but unfilled demand for affordable

cigarettes. The MSA and the steps taken by the Majors to effectuate its objectives have been calculated to keep that demand unfilled.

The Absence of Any State Supervision of Prices and Production

38. As described above, the MSA contains restrictions on competition that permit private parties, the Majors, to engage in anticompetitive actions, i.e., the fixing and raising of prices to supracompetitive levels without fear of competition. The actions of these private parties in raising prices have injured wholesalers and consumers of cigarettes who have been forced to pay these higher prices. The raising of prices to levels far above that which is needed to fund payments due under the MSA promotes the individual interests of the Majors and not any policy of the Commonwealth of Pennsylvania. Under the MSA, the states lack oversight or authority over the tobacco manufacturers' prices and production levels. These decisions are left entirely to private actors. Nothing in the MSA gives the Commonwealth of Pennsylvania, or any other state, authority to object when the tobacco companies raise their prices, nor have the states attempted to make any such objection. The Majors have raised their prices "sharply and uniformly" since the execution of the MSA, by 60% since late 1998. These price increases have not been monitored or regulated by the Commonwealth or any other state. The states have utterly failed to provide for or implement any means by which to provide active supervision of the prices and production levels of the Majors in the domestic cigarette industry.

First Claim For Relief
Violation of § 1 of the Sherman Act)

39. Plaintiffs repeat each and every allegation contained in paragraphs 1 through 39 of this Complaint as if set forth herein fully at length.

40. The restraints contained in the MSA and the concerted acts committed subsequent to its execution by the Majors were done to enable prices of cigarettes sold by the Majors to be maintained at artificially and anticompetitively high levels in order to generate substantial profits for the Majors.

41. By preventing competition at the discount level by existing SPMs and NPMs and potential new entrants, the MSA sets forth a classic restriction of output and allocation of market share between four competitors having 93.6% of the market.

42. The basic mechanism for achieving the output restriction is the requirement of the Renegade Clause that any competitor of the Majors who joins the MSA must limit its sales in any subsequent year to the greater of its 1998 market share or 125% of its 1997 market share in order to avoid having to make draconian payments to the states. This output restriction and allocation of market share scheme itself is unlawful per se. Its sole objective is to restrict output of the Majors' competitors and protect the Majors from price competition. The other facet of the market allocation scheme is its effective barrier to new entrants. By defining the 1997 market share for new entrants as zero for purposes of determining their production quota, the MSA requires new entrants to make pro rata "settlement payments" even though they have never been charged with committing any wrongful acts.

43. The corollaries to the output restriction scheme are the mechanisms contained in the MSA and the steps taken by the Majors and the states to force NPMs to

become SPMs. One such mechanism is the requirement that each state adopt a Qualifying Statute, which have in fact been adopted in all 46 states that are parties to the MSA. Another mechanism is the establishment of the $50 million "enforcement" fund that the Majors agreed to set up on March 31, 1999 to coerce the NPMs into joining the MSA.

44. The acts and agreements set forth above were made and carried out for the purpose of raising and maintaining the price of cigarettes in the U.S. domestic market at artificially high levels. They are thus illegal per se.

45. The restrictions on competition contained in the MSA created an output cartel in which the four companies having nearly 94% of the cigarette market have been and continue to be allowed to raise prices to artificially high and supracompetitive levels without any monitoring, regulation or active supervision of any kind by the states.

46. The acts and agreements set forth above have had the effect of restricting output, eliminating competition, allocating market share, and raising and maintaining the prices of cigarettes in the U.S. domestic market at artificially high and supracompetitive levels and thus constitute a contract, combination or conspiracy in restraint of trade by the in violation of § 1 of the Sherman Act, 15 U.S.C. § 1.

47. As the Third Circuit Court of Appeals held in *Bedell*, the scheme to displace and eliminate competition in the national market for the manufacture and sale of cigarettes adopted by the Commonwealth of Pennsylvania in the MSA does not constitute state action and is not immune from the application of the Sherman Act within the

meaning of *Parker v. Brown*, 317 U.S. 341 (1943), and *California Retail Liquor Dealers Ass'n v. Midcal Aluminum, Inc.*, 445 U.S. 97 (1980).

48. Each plaintiff has been injured in his or her business or property by having to pay the artificially high prices of cigarettes set by the Majors. The injury to the public inflicted as a result of the antitrust law violations alleged herein consists of the excessively high prices paid by wholesalers, retailers and ultimate purchasers and consumers of cigarettes sold in the United States.

49. Unless defendants are enjoined by this Court from implementing or taking further steps to enforce the terms and provisions of the MSA, the output cartel established by the MSA will continue to cause and threaten injury to plaintiffs and other consumers of tobacco products.

Second Claim for Relief
(Violation of the Commerce Clause)

50. Plaintiffs repeat each and every allegation contained in paragraphs 1 through 49 of this Complaint as if set forth herein fully at length.

51. The MSA unduly encroaches upon the enumerated federal power over interstate commerce set forth in the United States Constitution, Article I, Section 8, Clause 3.

Third Claim for Relief
(Violation of the Compacts Clause)

52. Plaintiffs repeat each and every allegation contained in paragraphs 1 through 51 of this Complaint as if set forth herein fully at length.

53. The MSA is a multistate agreement that violates the Compacts Clause of the United States Constitution, Article I, Section 10, Clause 3, in that it is a combination tending to the increase of power in the states which has or may encroach upon the just supremacy of the United States to regulate interstate trade in the domestic cigarette market.

54. WHEREFORE, plaintiffs demand judgment against defendants declaring and adjudicating as follows:

a. Declaring that defendants' continued implementation, enforcement and performance of the MSA on behalf of the Commonwealth of Pennsylvania constitutes a per se violation of § 1 the Sherman Act;

b. Declaring that defendants' continued implementation, enforcement and performance of the MSA on behalf of the Commonwealth of Pennsylvania has no state action immunity from the Sherman Act;

c. Declaring that defendants' continued implementation, enforcement and performance of the MSA on behalf of the Commonwealth of Pennsylvania constitutes a violation of the Commerce Clause of the U.S. Constitution;

d. Declaring that defendants' continued implementation, enforcement and performance of the MSA on behalf of the Commonwealth of Pennsylvania constitutes a violation of the Compacts Clause of the U.S. Constitution;

e. Enjoining pendente lite and permanently defendants' continued implementation, enforcement and performance of the MSA;

f. Awarding plaintiffs reasonable attorneys' fees, together with the costs and disbursements of this action, including reimbursement of plaintiff's expenses; and

g. Granting such other and further relief as this Court may deem just and proper.

October 31, 2001

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